

REMARKS

Claims 38-56 and 76-168 are pending in the patent application. The Applicants note that dependent claims 122, 141 and 160 have been withdrawn but are still pending the application.

Examiner Conversation

The Applicants would like to thank the Examiner for the conversation on May 22, 2007 with Applicants' representative John Gatz in which the § 112, first paragraph, rejection was discussed. The Examiner suggested Applicants present any arguments and/or amend the claims in a written response.

35 U.S.C. § 112, First Paragraph, Rejection

Claims 38, 76, 119, 138 and 157 were previously rejected under 35 U.S.C. § 112, second paragraph, as being indefinite as discussed at page 3 of the Office Action dated August 18, 2006. Specifically, claims 38, 76, 119, 138, and 157 recited language "sealed to at least one of.... and", which was objected to as using improper Markush-type language. For example, claim 38 previously recited "sealing the second layer to at least one of the package and the first layer." This language was in, *inter alia*, the originally filed claim 38 and, thus, is supported by the original disclosure. This language of claim 38 includes, (a) a second layer being sealed to the package, (b) a second layer being sealed to the first layer or (c) a second layer being sealed to both the package and the first layer. The Applicants believed that this language is proper and did not agree with the 35 U.S.C. § 112, second paragraph, rejection in the Office Action dated August 18, 2006. The Applicants stated the same in the filed Amendment and Reply to Office Action Dated August 18, 2006.

But to expedite prosecution, however, the Applicants amended independent claims 38, 76, 119, 138 and 157 to include the Markush-type language suggested by the Examiner in the conference call of September 20, 2006. For example, pending claim 38 now recites "sealing the second layer to at least one of the group consisting of the package and the first layer." The addition of the phrase "of the group consisting of" does not modify the meaning of the original claim language. Now, the Office Action states:

“There is no support for the phrase “at least one of the group consisting of” in the original disclosure. The only support found for the sealing of the second layer is in claim 38 of the original disclosure which states ‘sealing the first layer to the package; and sealing the second layer to at least one of the package and the first layer’ which is not the same as the group consisting of the package and the first layer as recited by the applicant[s].”

(Page 2 of the Office Action.)

First, there is additional support in the specification for the language of “sealing the second layer to at least one of the package and the first layer” or the language of “sealing the second layer to at least one of the group consisting of the package and the first layer.” See, e.g., page 5, lines 4-5, 30-32; page 14, lines 5-8; FIGs 8, 9. Second, there is no requirement that the exact language “of the group consisting of” be recited in the specification in order to be used in the claims. The language of “the group consisting of” is a form referred to as Markush-type language and in this case does not modify the meaning of the original language of “sealing the second layer to at least one of the package and the first layer”, but rather puts it into a different form. For example “the group consisting of a and b” is the same as “a or b”.

Therefore, the Applicants believe that the amended language of “sealing the second layer to at least one of the group consisting of the package and the first layer” is proper and supported by the specification and, thus, the 35 U.S.C. § 112, first paragraph, is improper and should be withdrawn. Additionally, the Applicants also believe that the original language of “sealing the second layer to at least one of the group consisting of the package and the first layer” is also proper and should not have been subject to a 35 U.S.C. § 112, second paragraph, rejection.

35 U.S.C. § 103(a) Rejections

Claims 38, 40-56, 76, 78-86, 119, 121, 123-138, 140, 142-157, 159 and 161-168 were rejected as being obvious over U.S. Patent No. 5,686,127 to Stockley (“Stockley”) in view of U.S. Patent No. 3,459,117 to Koch (“Koch”); U.S. Patent No. 4,522,835 to Woodruff (“Woodruff”); and U.S. Patent No. 6,042,859 to Shaklai (“Shaklai”). Claims 39, 77, 120, 139 and 158 were rejected over Stockley in view of Koch, Woodruff, Shaklai and U.S. Patent No. 5,629,060 to Garwood (“Garwood”).

The Applicants further reiterate its arguments with respect to the non-obviousness of the pending claims that were raised in previous responses to Office Actions on October 7, 2003; October 14, 2004; December 12, 2005 and May 24, 2006.


Thus, claims 38, 40-56, 76, 78-86, 119, 121, 123-138, 140, 142-157, 159 and 161-168 are not obvious over Stockley, Koch, Woodruff, Shaklai or any combination thereof. Claims 39, 77, 120, 139 and 158 are not obvious over Stockley, Koch, Woodruff, Shaklai, Garwood or any combination thereof. Therefore, claims 38-56, 76-86 and 119-168 should be in a condition for allowance.

Conclusion

The Applicants submit that the claims are in a condition for allowance and action toward that end is earnestly solicited. It is believed that no additional fees are due; however, should any additional fees be required (except for payment of the issue fee), the Commissioner is authorized to deduct the fees from Nixon Peabody LLP Deposit Account No. 50-4181, Order No. 247097-01106USC1.

Respectfully submitted,

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Date



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